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54161 7590 09/08/2009 LENOVO (UNITED STATES) INC. c/o Sawyer Law Group LLP 2465 E. Bayshore Road Suite No. 406 PALO ALTO, CA 94303				
EXAMINER				
PIZIALI, JEFFREY J				
ART UNIT		PAPER NUMBER		
2629				
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09/08/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@sawyerlawgroup.com

Office Action Summary

Application No.

10/722,084

Applicant(s)

KAWANO, SEIICHI

Examiner

JEFF PIZIALI

Art Unit

2629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/938,221.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on *5 August 2009* has been entered.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent *Application No. 09/938,221*, filed on *23 August 2001*.

Drawings

3. The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the figures.

Specification

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. *Claims 1, 2, and 6-8* are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claim 1 recites, "*a brightness adjusting system, comprising:*

a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit; and

a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application."

This "*first/second applications displayed in first/second windows*" subject matter is not found in the original disclosure of the invention.

Claim 6 recites, "*the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application.*"

This "*word processing, spreadsheet application, and image processing application*" subject matter is not found in the original disclosure of the invention.

Claim 8 recites, "*a brightness adjusting system, comprising:*
a display gradation calculating means for calculating a first display brightness in a first application displayed in a first window on a display unit; and
a brightness adjusting means for adjusting a screen display brightness of the display unit according to the first display brightness,
wherein in response to a second application being displayed in a second window on the display unit,
the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application of the second application."

This "*first/second applications displayed in first/second windows*" subject matter is not found in the original disclosure of the invention.

7. *Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.*

The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites, "*a brightness adjusting system, comprising:*
a display gradation calculator to calculate a first display brightness in a first application displayed in a first window on a display unit; and
a brightness adjuster to adjust a screen display brightness of the display unit according to the first display brightness, wherein
in response to a second application being displayed in a second window on the display unit,
the display gradation calculator calculating a second display brightness of the second window, and
the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application of the second application."

This "*first/second applications displayed in first/second windows*" subject matter is not enabled by the original disclosure of the invention.

Claim 6 recites, "*the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application.*"

This "*word processing, spreadsheet application, and image processing application*" subject matter is not enabled by the original disclosure of the invention.

Claim 8 recites, "*a brightness adjusting system, comprising:*
a display gradation calculating means for calculating a first display brightness in a
first application displayed in a first window on a display unit; and
a brightness adjusting means for adjusting a screen display brightness of the display
unit according to the first display brightness,
wherein in response to a second application being displayed in a second window on the
display unit,
the display gradation calculator calculating a second display brightness of the second
window, and
the brightness adjusting means adjusting the screen display brightness of the display
unit according to a type of application of the second application."

This "*first/second applications displayed in first/second windows*" subject matter is not enabled by the original disclosure of the invention.

8. The remaining claims are rejected under 35 U.S.C. 112, first paragraph, as being dependent upon rejected base claims.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 1 recites the limitation "*type of application*" (*line 10*). The addition of the word "*type*" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. Ex parte Copenhagen, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one having ordinary skill in the art what "*type*" is intended to convey. See MPEP 2173.05(b).

12. The term "*RGB*" in claim 2 (*line 3*) is a relative term which renders the claim indefinite. The term "*RGB*" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

It would be unclear to one having ordinary skill in the art what the term/acronym "*RGB*" is intended to represent and/or convey.

13. Claim 2 recites the limitation "***the specific area***" (*line 4*). There is insufficient antecedent basis for this limitation in the claim.

14. Regarding claim 2, the lack of a period renders the claim indefinite.

It would be unclear to one having ordinary skill in the art where the claimed subject matter ends, thereby rendering the scope of the claim unascertainable. See MPEP § 2173.

15. Claim 7 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

An omitted structural cooperative relationship results from the claimed subject matter: "***a window***" (*claim 7, line 3*).

It would be unclear to one having ordinary skill in the art whether this limitation is intended to refer to the earlier claimed, "***first window***" (*claim 1, line 3*) and/or "***second window***" (*claim 1, line 6*).

16. Claim 7 recites the limitation "***the display brightness***" (*line 6*). There is insufficient antecedent basis for this limitation in the claim.

It would be unclear to one having ordinary skill in the art whether this limitation is intended to refer to the earlier claimed, "***first display brightness***" (*claim 1, line 2*); "***screen display brightness***" (*claim 1, line 4*); and/or "***second display brightness***" (*claim 1, line 7*).

17. Claim 8 recites the limitation "*the display gradation calculator*" (line 7). There is insufficient antecedent basis for this limitation in the claim.

18. Claim 8 recites the limitation "*type of application*" (line 10). The addition of the word "*type*" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. Ex parte Copenhaver, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one having ordinary skill in the art what "*type*" is intended to convey. See MPEP 2173.05(b).

19. The claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

As a courtesy to the Applicant, the examiner has attempted to also make rejections over prior art -- based on the examiner's best guess interpretations of the invention that the Applicant is intending to claim.

However, the indefinite nature of the claimed subject matter naturally hinders the Office's ability to search and examine the application.

Any instantly distinguishing features and subject matter that the Applicant considers to be absent from the cited prior art is more than likely a result of the indefinite nature of the claims.

The Applicant is respectfully requested to correct the indefinite nature of the claims, which should going forward result in a more precise search and examination.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

21. *Claims 1, 2, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Megied et al (US 6,556,253 B1).*

Regarding claim 1, *Megied* discloses a brightness adjusting system [*e.g.*, *Fig. 2*], comprising:

a display gradation calculator [*e.g.*, *Fig. 2: 400*] to calculate a first display brightness in a first application displayed in a first window [*e.g.*, *Fig. 1A: W1-W4*] on a display unit [*e.g.*, *Fig. 2: 120, 120'*]; and

a brightness adjuster [*e.g.*, *Fig. 2: 117*] to adjust a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [*e.g.*, *Fig. 1A: W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application [*e.g.*, a bright or dark "type of application" -- i.e., wherein the

"type of application" is an application exhibiting high luminance or low luminance] of the second application

(see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Regarding claim 2, **Megied** discloses the display gradation calculator calculates the first and second display brightness by converting a gradation of RGB elements in a draw signal of an image displayed in the specific area [e.g., Fig. 1A: W1-W4] to a gray scale gradation (see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Regarding claim 7, **Megied** discloses a window manager [e.g., Fig. 2: 111-114, 400] to detect a window [e.g., Fig. 1A: W1-W4] in focus [e.g., active, selected by a user], and
in response to detecting that the second widow is in focus,
the display gradation calculator calculating the second display brightness, and
the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1; furthermore, **Megied** discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculating means [e.g., Fig. 2: 400] for calculating a first display brightness in a first application displayed in a first window [e.g., Fig. 1A: W1-W4] on a display unit [e.g., Fig. 2: 120, 120']; and

a brightness adjusting means [e.g., Fig. 2: 117] for adjusting a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*),

wherein in response to a second application being displayed in a second window [e.g., Fig. 1A: W1-W4] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application [e.g., a bright or dark "type of application" -- i.e., wherein the "type of application" is an application exhibiting high luminance or low luminance] of the second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

22. Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by **Kidder (US 5,822,599 A)**.

Regarding claim 1, **Kidder** discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculator [e.g., *Fig. 2: 202*] to calculate a first display brightness in a first application [e.g., *word processing, spreadsheet, graphics illustrator program*] displayed in a first window [e.g., *Fig. 1: 102*] on a display unit [e.g., *Fig. 2: 204*]; and

a brightness adjuster [e.g., *Fig. 2: 224*] to adjust a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*), wherein

in response to a second application [e.g., *word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit, the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or, preferences submitted by an operator of the computer system."*] of the second application

(*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Regarding claim 6, **Kidder** discloses a method [e.g., *Fig. 3*], wherein the first application comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire document, including Column 3, Line 54 - Column 4, Line 12*).

Regarding claim 7, **Kidder** discloses a window manager [e.g., Fig. 2: 224, 226] to detect a window in focus [e.g., Figs. 1-2: *active*], and

in response to detecting that the second widow is in focus,
the display gradation calculator calculating the second display brightness, and
the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1; furthermore, **Kidder** discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculating means [e.g., Fig. 2: 202] for calculating a first display brightness in a first application [e.g., *word processing, spreadsheet, graphics illustrator program*] displayed in a first window [e.g., Fig. 1: 102] on a display unit [e.g., Fig. 2: 204]; and
a brightness adjusting means [e.g., Fig. 2: 224] for adjusting a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*),

wherein in response to a second application [e.g., *word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application [Column 3, Line 65 - Column 4, Line 3: "*For example, the*

boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or, preferences submitted by an operator of the computer system."] of the second application

(see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. In the alternative, *claims 1, 2, and 6-8* are rejected under 35 U.S.C. 103(a) as being unpatentable over *Megied et al (US 6,556,253 B1)* in view of *Kidder (US 5,822,599 A)*.

Regarding claim 1, *Megied* discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculator [e.g., Fig. 2: 400] to calculate a first display brightness in a first application displayed in a first window [e.g., Fig. 1A: W1-W4] on a display unit [e.g., Fig. 2: 120, 120']; and

a brightness adjuster [e.g., Fig. 2: 117] to adjust a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [e.g., Fig. 1A: W1-W4] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application [e.g., a bright or dark "type of application" -- i.e., wherein the "type of application" is an application exhibiting high luminance or low luminance] of the second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Should it be shown that *Megied* teaches "first/second applications displayed in first/second windows" subject matter with insufficient specificity:

Kidder discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculator [e.g., Fig. 2: 202] to calculate a first display brightness in a first application [e.g., word processing, spreadsheet, graphics illustrator program] displayed in a first window [e.g., Fig. 1: 102] on a display unit [e.g., Fig. 2: 204]; and

a brightness adjuster [e.g., Fig. 2: 224] to adjust a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*), wherein

in response to a second application [e.g., *word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or, preferences submitted by an operator of the computer system."*] of the second application

(*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Megied and **Kidder** are analogous art, because they are from the shared inventive field of display brightness adjustment systems.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to display **Kidder's** application programs in **Megied's** windows, so as to provide brightness adjustment control while displaying well known, commercially popular window applications.

Regarding claim 2, **Megied** discloses the display gradation calculator calculates the first and second display brightness by converting a gradation of RGB elements in a draw signal of an image displayed in the specific area [e.g., Fig. 1A: W1-W4] to a gray scale gradation (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Regarding claim 6, **Kidder** discloses the first application comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire document, including Column 3, Line 54 - Column 4, Line 12*).

Regarding claim 7, **Megied** discloses a window manager [e.g., Fig. 2: 111-114, 400] to detect a window [e.g., Fig. 1A: W1-W4] in focus [e.g., active, selected by a user], and
in response to detecting that the second widow is in focus,
the display gradation calculator calculating the second display brightness, and
the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Kidder discloses a window manager [e.g., Fig. 2: 224, 226] to detect a window in focus [e.g., Figs. 1-2: active], and
in response to detecting that the second widow is in focus,
the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1; furthermore, **Megied** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculating means [*e.g., Fig. 2: 400*] for calculating a first display brightness in a first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig. 2: 120, 120'*]; and

a brightness adjusting means [*e.g., Fig. 2: 117*] for adjusting a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*),

wherein in response to a second application being displayed in a second window [*e.g., Fig. 1A: W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the "type of application" is an application exhibiting high luminance or low luminance*] of the second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Should it be shown that **Megied** teaches "*first/second applications displayed in first/second windows*" subject matter with insufficient specificity:

Kidder discloses a brightness adjusting system [e.g., Fig. 2], comprising:

a display gradation calculating means [e.g., Fig. 2: 202] for calculating a first display brightness in a first application [e.g., word processing, spreadsheet, graphics illustrator program] displayed in a first window [e.g., Fig. 1: 102] on a display unit [e.g., Fig. 2: 204]; and
a brightness adjusting means [e.g., Fig. 2: 224] for adjusting a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*),

wherein in response to a second application [e.g., word processing, spreadsheet, graphics illustrator program, email update] being displayed in a second window on the display unit,
the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjusting means adjusting the screen display brightness of the display unit according to a type of application [Column 3, Line 65 - Column 4, Line 3: "*For example, the boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or, preferences submitted by an operator of the computer system.*"] of the second application

(see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Megied and **Kidder** are analogous art, because they are from the shared inventive field of display brightness adjustment systems.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to display **Kidder's** application programs in **Megied's** windows, so as to provide brightness adjustment control while displaying well known, commercially popular window applications.

Response to Arguments

25. Applicant's arguments filed 5 August 2009 have been fully considered but they are not persuasive.

The Applicant contends, "*The disclosure describes multiple types of applications being displayed, such as Adobe Reader (e.g., see p. 18, ll. 17) and motion picture playback software (e.g., see p. 19, ll. 3). Additionally, the disclosure describes multiple windows being displayed (e.g., see p. 12, ln. 16; p. 13, ll. 13-15; and p. 6, ll. 4-5). Furthermore, one of ordinary skill in the art would be able to implement the invention as recited with first and second applications, and first and second widows*" (see Page 6 of the Response filed 5 August 2009). However, the examiner respectfully disagrees.

The subject matter of, *displaying first and second applications in first and second windows, calculating the brightness in both windows, and then adjusting screen brightness based on the "type of application" of the second application*, is not found in, nor enabled by, the original disclosure of the invention.

The Applicant contends, "word processor applications are disclosed (e.g., see p. 20, ll. 3-4) and image processing software is described (e.g., see p. 21, ln. 12; and p. 20, ln. 10). Moreover, one of ordinary skill in the art would be able to implement the invention as recited with a word process, spreadsheet and image processing application" (see Page 6 of the Response filed 5 August 2009). However, the examiner respectfully disagrees.

The subject matter of, *displaying a word processing application (or a spreadsheet application) in a first window and displaying an image processing application a second window, calculating the brightness in both windows, and then adjusting screen brightness based on the "type of application" of the image processing application*, is not found in, nor enabled by, the original disclosure of the invention.

The Applicant contends, "Whereas *Megied* may disclose adjusting brightness in a window, claim 1 recites adjusting brightness in a window based on a type of application displayed in the window. As a result, different applications can receive different treatment, and have a more optimal display brightness for the type of application (e.g., word processing application treated differently from a image processing application). On the other hand, *Megied*

*appears to treat each application the same. Thus, **Megied** fails to teach or disclose the application based brightness adjustment of claim 1. Similarly, **Kidder** fails to teach or disclose the same limitations for the same reasons as discussed with respect to **Megied**" (see Page 8 of the Response filed 5 August 2009). However, the examiner respectfully disagrees.*

Firstly, the examiner respectfully reminds the Applicant of the Restriction Requirement mailed on 9 January 2007.

The Applicant elected of **Species I** (drawn to a brightness adjusting system wherein the screen brightness is adjusted according to the display brightness in the window regardless of the software type displayed in the window -- see Page 19, Lines 18-20 of the instant specification, for instance) in the reply filed on 26 April 2007.

Species II (drawn to a brightness adjusting system wherein the screen brightness is adjusted according to the software type displayed in the window; and wherein there is no need to find the display brightness in the window -- see Page 19, Line 20 - Page 20, Line 7 of the instant specification, for instance) was non-elected and withdrawn by the Applicant in the same reply filed on 26 April 2007.

The policy of the Office is not to permit the Applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. The pending claims remain indefinite enough as to arguably continue to read on the elected species.

However, the Applicant is respectfully reminded that any amendment canceling all claims drawn to an elected invention and presenting only claims drawn to a non-elected invention will be considered non-responsive (MPEP § 821.03).

Secondly, contrary to the Applicant's allegation, **Megied** does not treat each application the same.

Megied discloses adjusting the screen display brightness of the display unit [e.g., Fig. 2: 120, 120'] according to a type of application [e.g., a bright or dark "type of application" -- i.e., wherein the "type of application" is an application exhibiting high luminance or low luminance] of the second application being displayed in a window [e.g., Fig. 1A: W1-W4] on the display unit (see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Thirdly, contrary to the Applicant's allegation, **Kidder** does not treat each application the same.

Kidder discloses adjusting the screen display brightness of the display unit [e.g., Fig. 2: 204] according to a type of application [Column 3, Line 65 - Column 4, Line 3: "For example, the boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities currently being executed by the application program; or, preferences submitted by an operator of the computer system."] of the second application being displayed in a window [e.g.,

Art Unit: 2629

Fig. 1: 102] on the display unit (*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Applicant's arguments with respect to *claims 1, 2, and 6-8* have been considered but are moot in view of the new ground(s) of rejection.

By such reasoning, rejection of the claims is deemed necessary, proper, and thereby maintained at this time.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFF PIZIALI whose telephone number is (571)272-7678. The examiner can normally be reached on Monday - Friday (6:30AM - 3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chanh Nguyen can be reached on (571) 272-7772. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeff Piziali/
Primary Examiner, Art Unit 2629
28 August 2009